law. It is the policy of the law to favor the grant in escrow. At least it is not regarded as just that one charged with notice of the grant in escrow should nevertheless take a complete legal title; and all jurisdictions agree that he cannot, though there may be an exception where the original grantee is a volunteer. Since however the cases reach this result on different grounds, a conflict arises as to whether an innocent purchaser will take a complete legal title.

Some jurisdictions cut off the intervening grant to a purchaser with notice by extending the use of the fiction of relation.[3] But as it is a general doctrine that a fiction invoked to do justice should not be used against innocent third parties,[4] in these jurisdictions a *bona fide* purchaser from the grantor of a deed in escrow takes an indefeasible title,[5] and this doctrine has been recently followed. *Emmons* v. *Harding*, 70 N. E. Rep. 142 (Ind., Sup. Ct.).

Other jurisdictions do not allow an innocent purchaser to defeat the grantee in escrow.[6] These jurisdictions hold that after the deed is placed in escrow the grantor no longer has full legal title. The grant in escrow puts the land out of his power and makes it possible for the grantee to get something analogous to specific performance at law. All that the grantor has is a title subject to a defeasance, and a title subject to a defeasance is all that a purchaser from him, whether *mala fide* or *bona fide*, can buy.[7] Therefore, notwithstanding the intervention of third parties, the grantee in escrow gets a full legal title upon performance of the conditions.[8] The latter decisions invoke no fiction in reaching this result and seem to support the better rule.

COMMUNICATION OF REVOCATION. — An offer to make a contract is good, generally speaking, until revoked. A question presenting considerable difficulty, however, is whether knowledge by the offeree, indirectly acquired, that the offerer intends to revoke or has done an act inconsistent with the continuance of the offer, is sufficient revocation. The leading case on the subject is Dickinson *v.* Dodds.[1] The defendant offered to sell to the plaintiff certain land. On the following day knowledge came indirectly to the plaintiff that the defendant was negotiating a sale of the property to another; whereupon the plaintiff, before any notice of revocation had been communicated to him by the defendant, handed the latter an acceptance of his offer. The defendant, having already sold the land to another, refused to perform, and the plaintiff brought a bill in equity against the defendant and his vendee. The court refused to grant specific performance. The case has been followed in Maryland,[2] and is again approved and followed in a late Wyoming case. *Frank* v. *Stratford-Handcock*, 77 Pac. Rep. 134. While in each of these cases the plaintiff is praying specific performance, which it would seem could not be granted in any event, since the vendee's right to the property is equal and arose prior to

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[3] McDonald *v.* Huff, 77 Cal. 279.
[4] Viner's Abdg. tit. "Relation."
[5] Wolcott *v.* Johns, 7 Col. App. 360.
[6] Hall *v.* Harris, 5 Ired. Eq. (N. C.) 303.
[7] Hooper *v.* Ramsbottom, 6 Taunt. 12; Fort *v.* Beekman, 1 Johns. Ch. (N. Y.) 288.
[8] Leiter *v.* Pike, 127 Ill. 287.

[1] L. R. 2 Ch. D. 463.
[2] Coleman *v.* Applegarth, 68 Md. 21.

that of the offeree, if any, and his conscience cannot be charged by his mere knowledge that a revocable offer was outstanding when he made his agreement with the offerer, yet the cases test the validity of the acceptance, for under modern practice equity can award damages where it is impossible to grant specific performance. This was not done, the court in each instance granting no relief whatever, placing its decision on the broad ground that the attempted acceptance, after knowledge of the negotiation or sale, was ineffectual, and that no contract was formed.

In support of the holding of the above cases, this argument is made: the legal fiction that an offer is repeated during every moment from the time it leaves the offerer until revocation or acceptance, amounts to a presumption raised at the moment of acceptance that justifies the offeree in assuming that the offerer is still of the same mind. This presumption, however, cannot be raised when the contrary is known to the offeree to be the fact. Again, when the offerer knows that knowledge of the sale is reasonably certain to reach the offeree, as proves to be the fact, and when the offeree as a reasonable man must understand such notice as revocation of the offer, why require the offerer to say in so many words, "I revoke my offer"? Is it not enough to put upon him the risk of having two contracts on his hands in case his expectation of notice reaching the offeree is not realized?

Both theoretically and practically, however, it would seem that the authority on this point is open to serious objection. An offer which comes to the offeree indirectly, through the casual report of a third person, cannot be so accepted as to impose a binding contract on the offerer;[8] and a revocation should in principle be subject to the same rule. Moreover, as a practical matter, in order to compel the offeree to rely upon the information, must it be absolute knowledge of a completed sale, or is mere notice of pending negotiations sufficient? Suppose the information is false but believed to be true; or true but reasonably believed to be false; or wholly uncertain and indefinite; in any case the offeree is placed in a doubtful and embarrassing situation. All of these difficulties could easily be obviated by requiring in every case that the revocation be directly communicated.

ESTOPPEL THROUGH FAILURE TO ACT. — Under the law of estoppel duties are imposed, liability for the breach of which, though it does not subject the wrong-doer to any direct action, is none the less rendered effective in that he is prevented from asserting a right which he otherwise would have had. A case decided recently in the Supreme Court of Canada seems to go very far in imposing a duty of this kind. The defendant, living in Montreal, received a notice from the plaintiff, a stranger living in Toronto, asking him to provide payment against a note of his in the plaintiff's hands. In a suit on the note, the court held that since the defendant did not telegraph at once that the note was a forgery and thus save the plaintiff loss from paying out the proceeds which had been placed to the credit of the party discounting the note, the defendant is estopped to assert the forgery. *Ewing* v. *Dominion Bank*, 40 Can. L. J. 468.

It is fairly well settled that in case A stands by and sees B sell A's land

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[8] Canney *v.* South, etc., R. R. Co., 63 Cal. 501.